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Supreme Court of the United States

OCTOBER TERM, 1946

No. 624

AMERICAN RAILROAD COMPANY OF PUERTO RICO,

Petitioner,

against

ANTONIO TORRES ROMERO, *et als.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, AND BRIEF IN SUPPORT THEREOF

PETITION

To the Honorable FREDERICK MOORE VINSON, *Chief Justice,* and the Associate Justices of the Supreme Court of the United States:

Your Petitioner respectfully shows:

Statement

Petitioner is a public service corporation operating a railroad in Puerto Rico.

In the month of August, 1941, Respondents—employees of Petitioner—through their attorneys, entered into negotiations with petitioner looking to the settlement of wage claims arising under the Fair Labor Standards Act of 1938 (R. 52). The amounts claimed were for the difference

between the wages paid and the wages fixed by the Fair Labor Standards Act and covered the period that the Act had been in force, or nearly three years. A preliminary agreement based upon the maximum amount that Petitioner estimated that it was able to pay, as to which the Territorial Representative of the Wage and Hour Division in Puerto Rico was consulted and informed, was submitted to the Assistant Administrator of the Wage and Hour Division in Washington during the month of September. The Assistant Wage and Hour Administrator conditioned the appointment of an industry committee to inquire into a decrease in the statutory minimum wage upon satisfactory arrangements by the petitioner to pay the amount of restitution to be fixed as a result of an investigation by the Wage and Hour Division as to the capacity of petitioner to pay (R. 52, 53, 54, 62, 65, 142, 143, 144, 152).

On November 4, 1941 a definite agreement was signed by representatives of the employees and of petitioner and later ratified by the parties, by which petitioner undertook to pay and the employees to accept in full settlement of their claims, seven hundred thousand dollars and such further additional amount as the Wage and Hour Division might determine that petitioner was able to pay as a result of an investigation of the business and financial ability of petitioner conducted by the Wage and Hour Division (R. 142, 143).

One of the considerations for the agreement was that it would enable the railroad to continue operations and "not only be to the interest of the workers and the company but would also be a matter of fundamental importance for the general public." (R. 142, 145, 157.)

The investigation was made and a report rendered to the Wage and Hour Division by a public accountant designated for that purpose, in which the possibility that the petitioner might obtain funds from the owner of all the railroad properties, the Spanish Company—Compañía de Ferrocarriles de Puerto Rico—, and of the Compañía Ferroviaria de Circunvalación de Puerto Rico, a corporation formed for the purpose of acquiring the stock and bonds of

the Compañía de Ferrocarriles and American Railroad Company, was also fully examined.

The investigation resulted in a finding that seven hundred thousand dollars was the maximum amount that Petitioner could pay. This amount—which was 44.8 per cent of the amount due petitioner's employees, assuming that they were each entitled to the benefits of that Act for all of the time that they worked for petitioner—was distributed among the employees, who signed release receipts, a copy of which is printed at pages 146 and 147 of the Record.

An industry committee was appointed and as a result of its report and recommendation a minimum rate of not less than twenty cents an hour was fixed by the Administrator for the railroad and property carrier industry in Puerto Rico by a Wage Order effective April 7, 1942 (R. 137-140, inc.).

On July 21, 1942, some 1,017 employees of petitioner, all of whom except three, had received payment under the terms of the Agreement of November 7, 1941 and signed releases, brought suit in the District Court of the United States for Puerto Rico against petitioner to recover the difference between the full amount that was owing them on November 4, 1941 and the amounts paid by petitioner under said Agreement, plus liquidated damages (R. 12-14).

In its answer to the Complaint petitioner set out as a second special defense the accord and satisfaction constituted by the Agreement of November 7, 1941 and receipts and releases signed by all plaintiffs, here respondents (R. 16, 17, 18).

Upon motion of plaintiffs, here respondents, a separate trial was had on the special defense of accord and satisfaction. The District Court sustained this defense and entered judgment dismissing the complaint as to respondents (R. 159).

Respondents appealed from the judgment to the Circuit Court of Appeals for the First Circuit.

No controverted issue of fact was raised by appellants. The correctness of the findings of fact of the District Court was not challenged or denied. The only question raised by respondents as appellants and involved in the appeal was whether the accord and satisfaction entered into for the considerations and under the special circumstances set out in the findings of the District Court was precluded by the Fair Labor Standards Act. The Circuit Court of Appeals held that the Act prohibited such a contract and reversed the judgment of the District Court.

Rulings of the Court Below

The District Court made the following Findings of Fact (R. 153, 154):

I

"American Railroad Company of Puerto Rico is and was at all times here material, engaged in operating a passenger and freight railroad system within the Island of Puerto Rico.

II

On November 4, 1941 certain employees of defendant, represented by attorneys Jaime J. Saldaña and Enrique Campos del Toro, and defendant represented by attorneys James R. Beverley, Henri Brown, Jaime Sifre and Carlos J. Torres, and also by its officers Rafael Martínez Dominguez and Secundino Lozana, entered into a written agreement relating to the claim of defendant's employees for wages alleged to be due them under the Fair Labor Standards Act. The original of said agreement in Spanish accompanied by an English translation, was introduced and admitted in evidence and marked Exhibit (1).

III

All plaintiffs in this case except Ernesto Quiñones, Pedro Cañizares and Trifon Aguayo, approved and ratified said agreement of November 4, 1941.

IV

All of the plaintiffs except Ernesto Quiñones, Pedro Cañizares and Trifon Aguayo, were paid by defendant in accordance with the terms of said agreement and upon receipt of the amounts so paid executed a release, a sample copy of which in Spanish accompanied by an English translation was introduced and admitted in evidence as **Exhibit (2)**.

V

The sum of $660,000 agreed upon in paragraph (4) of the agreement covers the period between the effective date of the Fair Labor Standards Act (October 24, 1938) and the date of the agreement, and represents 44.8 per cent of the amount due to defendant's employees assuming that they were each entitled to the benefits of the Act for all the time worked for defendant during said period.

VI

At the time said agreement of November 4, 1941 was executed defendant was unable to pay in full the amount due to employees assuming that each employee was covered by the Act. The sum of $700,000 represented the maximum which defendant could pay to its employees and thereafter continue operations or avoid insolvency. This was the opinion of plaintiffs at the time of the agreement and I reach a like conclusion.

VII

Defendant's employees with the exception of the three specifically mentioned, approved and ratified the said agreement. By agreement of all parties a certified public accountant was authorized to make such investigation as was considered necessary to determine the extent to which defendant was able to pay all of its employees the amount of wages due. The accountant made his report and stated that $700,000 represented the maximum amount which defendant could pay and continue operations or avoid bankruptcy proceedings.

VIII

From 1941 to 1942 the consolidated net income of the three companies, American Railroad Company, Cía. de Ferrocarriles and Cía. Ferroviaria de Circunvalación, shows a loss for every single year since 1933 totalling approximately $1,300,000 for the twelve year period."

The District Court concluded that in view of the facts found and considering the extraordinary circumstances existing at the time the agreement was made, the agreement was valid and enforceable as to all plaintiffs who approved and ratified the same (R. 155).

In the Opinion the District Court stated that in the instant case is found every element suggested in the opinion of Mr. Justice HOLMES in *Fort Smith and Western Railroad* vs. *Mills, Receiver,* 253 U. S. 206.

The Circuit Court of Appeals held (R.):

"Whether enforcement of the statutory rights of appellants will benefit or injure them, their employer or the community, is legally immaterial. The case is governed by Brooklyn Savings Bank *vs.* O'Neil, 324 U. S. 697, and D. A. Schulte, Inc. *v.* Salvatore Gangi, decided by the Supreme Court on April 29, 1946. The Brooklyn case decides that in the absence of a bona fide dispute between the parties, an agreement to accept less than the full amount due under the Act, including liquidated damages, is invalid. It does not appear that there was any dispute between the parties to the present suit when releases were executed. The Schulte case decides that even a dispute regarding coverage does not validate an agreement to accept less than the full statutory amount. The existence in the present case of a question of policy cannot have a greater effect. The Act does not exempt employers who are in financial difficulties."

It is further stated:

"Fort Smith & Western Railroad *vs.* Mills, 253 U. S. 206, on which appellee relies, is not in point. In that case, which arose under the Adamson Law, 39 Stat. 721,

the question was not whether employees could require their employer to comply with the law but whether the District Attorney could require the receiver of a railroad to comply with the law when the receiver and employees were agreed in wishing to disregard it."

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 24, 1946 (R. 174). Jurisdiction is invoked under Section 240(a) of the Judicial Code, as amended by Act of February 13, 1925, c. 229 (43 Stat. 638, 28 U. S. Code Sec. 347).

Errors to be Urged

The Circuit Court of Appeals erred in holding that the accord and satisfaction between Petitioner and Respondents was forbidden by the Fair Labor Standards Act; (a) that the decisions of this Court in *Brooklyn Savings Bank* vs. *O'Neil*, 234 U. S. 697, and *D. A. Schulte, Inc.* vs. *Salvatore Gangi*, 90 L. Ed. 873, were controlling, and (b) that *Fort Smith & Western Railroad Co.* vs. *Mills*, 253 U. S. 206, did not establish a principle controlling its decision.

Question Presented

Whether the Fair Labor Standards Act precludes a bona fide settlement of a claim for minimum wages, overtime and liquidated damages made by employees of an insolvent or financially embarrassed Puerto Rican railroad unable to pay the entire claim, when it is satisfactorily established that the amount paid under the settlement is the maximum amount that the railroad company is able to pay and in excess of the amount that the employees could recover in an action for the full amount and where such an action would probably result in the discontinuance of the operation of the railroad with consequent loss of employment by the employee claimants and serious injury to the public served by the railroad.

Reasons for Granting the Writ

1. The Circuit Court of Appeals has decided an important question of Federal law which has not been but should be settled by this Court, namely:

Whether an accord and satisfaction by which employees of a public service railroad accept part payment of amounts due them as wages under the Fair Labor Standards Act in full satisfaction of the entire amounts due, in consideration of the insolvency of the employer and its inability to pay more, the continuance of the operation of the railroad and their own employment, and the prejudice to the public that would result from discontinuance or abandonment of the railroad, is forbidden by the Act.

That question involves the broader question whether such employees can lawfully accept a plan of reorganization or be bound by a reorganization decree, whether employees of an employer that may be adjudicated a bankrupt can make such a settlement, and whether their claim for wages except those exempted by the Bankruptcy Act are released by the discharge of the bankrupt.

2. The decision below is probably in conflict with the applicable decisions of this Court. This Court held in *Fort Smith & Western Railroad Company* vs. *Mills*, 253 U. S. 862, that the right to a mandatory statutory minimum wage could be waived by railroad employees in consideration of the insolvency of the railroad to enable it "to go on barely paying its way, if it did so, not without impairing the mortgage security, not to speak of its capital." The *Fort Smith* case involved the wage rate fixed by the Adamson Act but the principle established is equally applicable to similar agreements under the Fair Labor Standards Act. This appears, inferentially at least, from the mention of this case in *Brooklyn Savings Bank* vs. *O'Neil*, 325 U. S. 697, 709.

The Circuit Court of Appeals considered that the decisions of this Court in *Brooklyn Savings Bank* vs. *O'Neil*, *supra*, and *D. A. Schulte* vs. *Salvatore Gangi*, 90 L. Ed. 873,

controlled its decision and in so doing misapplied these decisions neither of which considered or decided the validity of an accord and satisfaction or settlement involving exceptional circumstances of the kind presented by the instant case.

3. The decision of the Circuit Court of Appeals vitally affects the public interest and economic life of Puerto Rico in that its necessary consequence is the discontinuance of the principal railroad system of the island and the loss of employment by a large number of its citizens in an island where unemployment is a chronic evil.

WHEREFORE, your Petitioner, referring to the attached brief in support of the foregoing reasons for review, respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the First Circuit, commanding that Court to certify and send to this Court for its review and determination a full and complete transcript of the record and of the proceedings in the said Circuit Court of Appeals had in the case numbered and entitled on its docket No. 4122, *Antonio Torres Romero, et al., Plaintiffs-Appellants* vs. *American Railroad Company of Puerto Rico, Defendant-Appellee,* to the end that this cause may be reviewed and determined by this Court as provided by the statutes of the United States, and that the judgment herein of said Circuit Court of Appeals be reversed and for such other relief as to this Court may seem proper.

AMERICAN RAILROAD COMPANY OF PUERTO RICO,
Petitioner.

JAMES R. BEVERLEY,
HENRI BROWN,
Attorneys for Petitioner.

October, 1946.

BRIEF IN SUPPORT OF PETITION

Opinion Below

The opinion of the Circuit Court of Appeals is reported in 156 F. 2d, and appears at R. pages 173, 174. That of the District Court is not reported but appears at pages 153-159 inclusive of the Record.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on July 27, 1946.

Jurisdiction is invoked under Sec. 240 of the Judicial Code, as amended by Act of February 13, 1925 (28 U. S. C. Sec. 347).

Statement

A statement of the facts, questions involved and of assigned errors will be found in the petition.

Statutes Involved

The Fair Labor Standards Act of 1938 (Act of June 25, 1938, C. 676, 52 Stat. 1060, as amended by Res of June 26, 1940, c. 432 Sec. 3 (a) (b) 54 Stat. 616, Tit. 29 U. S. C. Secs. 201-219), and more particularly Secs. 2, 5 and 6 of the Act (Title 29 U. S. C. Secs. 202, 205 and 206). Bankruptcy Act, Sec. 77, Title 11 U. S. C. Sec. 205; Organic Act of Puerto Rico, Sec. 38, 39 Stat. 951, Title 48 U. S. C. Sec. 470.

Summary of Argument

The Fair Labor Standards Act of 1938 does not preclude or forbid an Accord and Satisfaction under the extraordinary circumstances of the instant case. The decision of the Circuit Court of Appeals to the contrary was induced by the erroneous assumption that the decisions of

this Court in *Brooklyn Savings Bank* vs. *O'Neil*, 325 U. S. 697 and *D. A. Schulte* vs. *Salvatore Gangi*, 90 L. Ed. 873 were applicable and controlling and that *Fort Smith & Western Railroad Company* vs. *Mills*, 253 U. S. 862, was neither applicable nor controlling.

ARGUMENT

The accord and satisfaction was a valid agreement not precluded by the Fair Labor Standards Act.

The Circuit Court of Appeals holds that insolvency of a railroad employer does not authorize an agreement by its employees to accept less than the total amount of wages due under the statute where failing such an agreement the employees would ultimately receive less than the agreed amount, in all probability would lose their employment through the discontinuance of the railroad and the public be deprived of a necessary public service.

The trial court held that these considerations motivated the agreement and that the apprehended consequences to employees, employer and the public would ensue. The agreement was based on these facts which were not controverted. The only question of law decided by the District Court was as to whether the agreement—the accord and satisfaction—was forbidden by the Fair Labor Standards Act and that question of law is all that the Circuit Court of Appeals decides.

Whether employees covered by the Fair Labor Standards Act could, under any circumstances, in advance of the performance of the work for which they were employed, contract for a minimum wage and overtime at a rate lower than that fixed by the Act or could, for any period of time, render voluntary gratuitous service is a question clearly distinct from that passed on by the lower courts. Here, the services had been performed, a debt had been incurred. Congress, of course, was cognizant of the fact that, as to wage debts, the amounts that employee creditors covered by

the Fair Labor Standards Act, could recover, in excess of such portion that enjoyed priority, would be limited by the assets of the employer. In other words, Congress knew that an employer whose gross realizable assets are worth one hundred thousand dollars could not pay a debt of two hundred thousand dollars. Doubtless, the Congress did not contemplate wage debts arrearages covering several years. But in view of differences of opinion and doubts as to coverage, evidenced by the numerous cases in which these questions were submitted to the Courts, it was inevitable that there should be arrearages.

There is a very clear distinction between contracts fixing wages for future services and contracts in settlement of debts due. A contract to render services for a stipulated or statutory wage is a wage contract. A contract to settle a due indebtedness is not a wage contract.

It should be noted that the Fair Labor Standards Act makes a distinction between Puerto Rican employers and employees and those in continental United States. In the Act as passed in 1938 the minimum statutory wages fixed by the Act were applicable to Puerto Rico. Industry Committees could not recommend or the Administrator fix lower minima. June 26, 1940 (Pub. Res. No. 88, 76th Congress), Congress, recognizing the different situation of employers and employees in Puerto Rico subject to the Act, authorized the Administrator to appoint separate industry committees to recommend and the Administrator to fix minimum wages in Puerto Rico lower than those fixed by Section 6(a)(1), (2) and (3) of the Act (Title 29 U. S. C. Section 206(a)(1), (2), (3) and subsection c). The Administrator, in reducing the minimum wage for petitioner's employees to two-thirds of the statutory minimum wage by the Wage Order effective April 7, 1942 (R. 137-140 inc.), obviously found that the reduced minimum wage would not (1) be detrimental to the minimum standard of living necessary for the health, efficiency and general well-being of the workers; (2) cause commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the

several States; (3) burden commerce or the free flow of goods in commerce; (4) constitute an unfair method of competition in commerce; (5) lead to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; or (6) interfere with the orderly and fair marketing of goods in commerce. (Fair Labor Standards Act, Section 2(a), Title 29, Sec. 202(a), U. S. C.). It is submitted that the accord and satisfaction entered into by respondents and petitioner likewise does not offend against the policy declared by Congress in the above cited Section of the Act.

The Act does not expressly prohibit employees from exercising the right—open to other citizens—of salvaging as much of wage arrearages as is possible by agreement with an insolvent employer unable to pay more. It is submitted that such a prohibition should not be inferred from the policy of the Act.

Ability to pay and the maximum amount that an insolvent employer can pay are both questions of fact.

Retention of employment through such an agreement tends to accomplish one of the purposes of the Act. When the employer is a public service railroad, the continuance of each public service is a matter in which its employees as members of the general public have a legitimate interest and concern. An agreement which enables the continuance of the railroad likewise serves a purpose for which the Fair Labor Standards Act was enacted.

As stated by the District Court: "We must not overlook the fact also that sustaining the validity of this agreement will have the effect of keeping the channels of interstate commerce open, whereas a different conclusion might have an opposite effect by forcing the carrier into receivership or liquidation" (R. 159). The situation of a Puerto Rican railroad is quite different from that of railroads in Continental United States in that other Federal Laws applicable to railroads in Continental United States are not applicable to Puerto Rico. Among others, the Interstate Commerce Act, the Safety Appliance Acts, An Act to amend an Act, entitled "An Act to regulate com-

merce, approved February 4, 1887, and all Acts amendatory thereof, by providing for a valuation of various kinds of property of carriers subject thereto and serving information concerning their stocks, bonds and other securities" approved March 1, 1913, do not apply to Puerto Rico. (Organic Act of Puerto Rico, Sec. 38, 39 Stat. 951, Title 48 U. S. Code 750.) As a consequence, the Bankruptcy Act (Title 11, U. S. C. Sec. 205) providing for the reorganization of railroads is probably not available to a Puerto Rican railroad.

The Circuit Court of Appeals erroneously considered that its decision in the instant case was ruled by *Brooklyn Savings Bank* vs. *O'Neil,* 324 U. S. 697, and *D. A. Schulte* vs. *Salvatore Gangi,* 90 L. Ed. 873. It misapplied both decisions. *Linstead* vs. *Chesapeake & Ohio Ry. Co.,* 276 U. S. 28, 32, 34, *Ingram Day Lumber Co.* vs. *McLouth,* 275 U. S. 471, 474. The only similarity between the facts in these cases and those in the instant case lies in the fact that those cases involved delayed payments or partial payments of wage arrearages. But in neither of the cases cited was there any claim that the employers were insolvent or unable to pay, nor was the accord and satisfaction based on insolvency or inability to pay or retention of employment as consideration. In neither case was the employer a public service railroad, and in neither case was the public interest in the preservation and continuance of a vitally necessary public service involved. In the majority opinion in the Brooklyn case the Court said at page 709: "Nor does the instant case involve exceptional circumstances of the kind held to justify a waiver agreement such as was upheld in *Ft. Smith & W. R. Co.* vs. *Mills,* 253 U. S. 206, 64 L. Ed. 862, 40 S. Ct. 526." Expressly, therefore, the decision in the Brooklyn case did not consider or decide as to the validity of an accord and satisfaction entered into under exceptional circumstances of the character indicated. Nor does the *Schulte* case consider or decide the validity of an accord and satisfaction based upon like exceptional circumstances.

The Circuit Court of Appeals held that the *Ft. Smith* case was "not in point". Its reasons for so holding are conjectural. It states that the *Ft. Smith* case arose under the Adamson Law, 39 Stat. 721, and that the question involved was not whether employees could require their employer to comply with the law but whether the District Attorney could compel such compliance.

The Adamson Act, like the Fair Labor Standards Act, fixed both the standard of a day's work and a minimum wage. Both provisions were equally mandatory. *Wilson* vs. *New*, 243 U. S. 332, 345. The first, the eight-hour standard, was permanently fixed. The second, fixing the wage standard, was for a limited time. But the fact that the time for which the wage was fixed was limited, in nowise affects its mandatory character during the time it was in effect. The wage agreement involved in the *Ft. Smith* case was made during the period in which the provision was in force. The minimum wages fixed in the Fair Labor Standards Act since June 26, 1940 were not permanent because the Administrator was authorized to reduce them.

The nature of the suit in which the validity of the agreement between the Receiver-employer and the employees of the railroad is adjudicated is immaterial.

The Agreement in the *Ft. Smith* case differs from that involved in the instant case in that it was a wage contract entered into in advance of the performance of the work to be compensated.

The Agreement in the instant case is the settlement of a debt for work performed for considerations among which are the same reasons and considerations which motivated the Agreement in the *Ft. Smith* case. The following language of Mr. Justice HOLMES in *Ft. Smith & Western Railroad Company* vs. *Mills, supra,* is peculiarly appropriate as applied to the Agreement in the instant case:

> "An insolvent road had succeeded in making satisfactory terms with its men, enabling it to go on, barely paying its way, if it did so, not without impairing even the mortgage security, not to speak of its capital. We must accept the allegations of the bill, and must as-

sume that the men were not merely negatively refraining from demands under the Act, but, presumably, appreciating the situation, desired to keep on as they were. To break up such a bargain would be at least unjust and impolitic, and not at all within the ends the Adamson law had in view."

That the accord and satisfaction in the instant case was beneficial to respondent employees, to petitioner and to the public, is undoubted. It is respectfully submitted that a law enacted for the benefit and protection of employees and that of the general public as well, should not be construed to deprive employees of the right to prevent serious financial loss and loss of employment by a bona fide accord and satisfaction; that a law designed to keep open the channels of commerce should not be invoked to close such channels.

Conclusion

The decision of the District Court holding that the Accord and Satisfaction was valid and respondents not entitled to recover, was right.

The Circuit Court of Appeals was in error in holding that the Accord and Satisfaction was precluded by the Fair Labor Standards Act and on that ground reversing the judgment of the District Court. The Writ of Certiorari should be granted, the judgment of the Circuit Court of Appeals reversed, and the judgment of the District Court of the United States for Puerto Rico affirmed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

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No. 624

AMERICAN RAILROAD COMPANY OF PUERTO RICO,

Petitioner,

vs.

ANTONIO TORRES ROMERO

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

SUGGESTIONS OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 624

AMERICAN RAILROAD COMPANY OF PUERTO RICO,

Petitioner,

vs.

ANTONIO TORRES ROMERO,

Respondent

SUGGESTIONS OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The respondents in this action, in opposition to the petition for a writ of certiorari, respectfully submit the following suggestions:

Opinion Below

The opinion of the Circuit Court of Appeals for the First Circuit *has not* been yet officially reported. It will be reported in 156 F. 2d; it now appears at page 173 of the Record and has been published in 6 WH Cases 219. That of the District Court has not been officially reported, but appears at page 153 of the Record and was published in 8 WHR 572.

Statement of the Case

The respondents accept the Statement by the petitioner, but wish to point out that the record does not show that any opinion was ever expressed by the Wage and Hour Division of the United States Department of Labor, with respect to the validity of the agreement of November 4, 1941 (R. 141), to which the said Statement refers, compromising the statutory liability of the petitioner or the right of the respondents to collect unpaid minimum wages, overtime compensation and liquidated damages in a suit instituted under Section (b) of the Fair Labor Standards Act of 1938 (29 U. S. C. A. 216).

Decision of the District Court

The District Court, in its Findings, Conclusion and Opinion (R. 153), held:

1. That the general rule is that waivers of the minimum wages due under the Act, are invalid (R. 156).

2. That the employees cannot waive the minimum wage to which they are entitled under the law, neither by contract *before* beginning their employment nor *after* by waiver or release, as either method would defeat the purpose of the Congress and would be in violation of the stated policy of the Act (R. 156).

3. That the existence of exceptional circumstances justify a departure from the general rule (R. 156).

4. That considering the extraordinary circumstances existing at the time the waiver agreement of November 4, 1941, was signed, it resulted beneficially to the respondents (R. 159), who were paid all that the petitioner could have paid and thereafter continue operations or avoid insolvency (R. 154).

5. That sustaining the validity of the said agreement would have the effect of keeping the channels of commerce open, whereas a different conclusion might have an opposite effect by forcing the petitioner into receivership or liquidation (R. 159).

6. That the said waiver agreement of November 4, 1941 was valid and enforceable as to all respondents who approved and ratified the same, who may not now question its validity (R. 155).

Appeal to the Circuit Court of Appeals

From the judgment of the District Court (R. 159), an appeal was taken by the respondents, to the Circuit Court of Appeals for the First Circuit (R. 160).

Decision of the Circuit Court of Appeals

The Opinion of the Circuit Court was rendered by a full Court (R-173). It held:

1. That whether the enforcement of the statutory rights of respondents would benefit or injure them, their employer, or the community, is legally immaterial (R. 173).

2. That the Act does not exempt employers who are in financial difficulties (R. 174).

3. That the *Fort Smith & Western Railroad Co.* v. *Mills*, 253 U. S. 206 case, on which both the District Court and the petitioner relied, is not in point (R. 174).

4. That the waiver or release agreement of November 4, 1941, executed by the respondents, is invalid (R-173.)

Petitioner's Position

The position of the petitioner is:

1. That the Act, does not preclude a bona-fide settlement of an indebtedness for unpaid minimum wages, overtime compensation and liquidated damages, under the Act.

2. That the Act does not expressly prohibit employees from exercising the right of salvaging as much of wage arrearages as is possible by agreement with an insolvent or financially embarrassed employer unable to pay more.

3. That the release executed by the respondents for an amount in excess of what they could have recovered in an action for the full amount due them, where such action would probably result in the discontinuance of the operations of their employer, with consequent loss of employment and serious injury to the public served by it, is valid.

Respondents' Position

The respondents contend in opposition:

1. That a statutory right conferred on a private party, but affecting the public interest, may not be waived or released if such waiver or release contravenes the statutory policy.

2. That the Congressional policy of uniformity in the application of the provisions of the Fair Labor Standards Act to all employers, may not be affected by their financial inability nor by any other circumstances, exceptional or not.

Reasons for Granting the Writ

The petition (pp. 8, 9) sets forth, as "Reasons for Granting the Writ",

1. That this case presents important questions of Federal law, that have not been but should be settled by this Court.

2. That the prevailing decision is probably in conflict with applicable decisions of this Court.

3. That the decision of the Circuit Court of Appeals vitally affects the public interest and economic life of Puerto Rico.

The "Reasons for Granting the Writ Are Not Sufficient"

The respondents submit that the petition does not state sufficient reasons for granting the writ, because:

1. All the important questions of Federal law set forth in the petition, have been either decided by this Court, or are not involved in this case.

2. The prevailing decision has correctly applied the decisions of this Court, and is not in conflict with any of them.

3. The remedy for any evil consequences to the public interest or economic life of Puerto Rico, in the uniform application of the Congressional policy of the Act, is beyond the province of this Court.

Conclusion

The respondents, referring to the brief submitted herewith, *infra*, in support of the foregoing suggestions, respectfully pray the petition for a writ of certiorari in this case, should be denied.

L. E. DUBON,
Attorney for the Respondents

OPPOSING BRIEF FOR RESPONDENTS

ARGUMENT

Point 1

Rights, Affecting the Public Interest, May Not Be Waived or Released

Statutory rights conferred on private parties, but affecting the public interest, may not be waived or released if such waiver or release contravenes the policy of the act. *Midstate Horticultural Co.* v. *Pennsylvania R. Co.*, 320 U. S. 356; *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173.

Any waiver of the right to the minimum wage or overtime compensation or liquidated damages fixed by the Fair Labor Standards Act of 1938, contravenes the Congressional policy, and is invalid. *Brooklyn Saving Bank* v. *O'Neill*, 324 U. S. 697; *D. A. Schulte, Inc.*, v. *Gangi*, decided April 29, 1946.

The purpose of the Act which was "to secure for the lowest paid segment of the nation's workers a subsistence wage," precludes the reduction by compromise, of the wages and damages allowed under the Act, even by reason of financial inability of the employer, as such compromises thwart the public policy of minimum wages, promptly paid, by reducing the sum selected by Congress as the proper minimum wage, and as the proper compensation for withholding payment of accrued wages. *D. A. Schulte, Inc.* v. *Gangi, supra.*

The employer and the employee are as much precluded from bargaining for less, *before* performance, as well as *after* performance, as otherwise, any employer operating under financial difficulties, or on the eve of bankruptcy,

could pay substandard wages, and because of such financial troubles, obtain a full release from all further liability, paying less than what the Act obliges him to, contrary to the statutory policy, just because his employees would have received less by pressing their claims to execution through legal proceedings, or because if forced into bankruptcy or receivership, they may be forced to join the legion of the unemployed and be not paid in full in any event.

POINT 2

The Congressional Policy of Uniformity in the Application of the Act, May Not Be Thwarted by Reason of Exceptional Circumstances.

To eliminate labor conditions detrimental of the minimum standards of living necessary for health, efficiency and the general welfare of workers, Congress, through the exercise of its power to regulate commerce to secure the free flow of goods in interstate commerce, adopted certain standards, delegating to the Administrator the power to reduce the basic minimum wages fixed by it, through the issuance of Wage Orders, upon the recommendation of Industry Committees, as provided in Sections 5(e) and 8 of the Act, to provide relief in those cases where exceptional circumstances might require a lower minimum. However, the exercise of this power to reduce those basic minimum wages was subjected by Congress to certain other standards, to fully carry the purposes of the Act, and was not left without limitations. The Act provides, that these Industry Committees must investigate conditions in the industry and recommend the highest minimum which will not substantially curtail employment, having due regard to economic and competitive conditions. To validate settlement agreements of liability under the Act because of ex-

ceptional circumstances, would seriously affect the uniform application of the statutory policy under which these Wage Orders and Industry Committees are created to carry out the motives and purposes of this legislation, because it would leave in the hands of the employer and his employees the power to determine *any* minimum wage, depending solely upon their relative bargaining powers and what in their own judgment may be considered as exceptional circumstances—*D. A. Schulte, Inc.*, v. *Gangi, supra*,—and the pressure which may be exercised to accept *any* terms under threats of bankruptcy, receivership, disemployment, and greater loss, all of which would be contrary to, and would seriou ly undermine the legislative policy of the Act, which it was designed to effectuate. Furthermore, if any waiver agreement could be valid in consideration of the financial disabilities of an employer the uniform enforcement of the Act would be greatly impaired due to compliance with its provisions left at the will of those subject to its terms, and the legislative purpose destroyed.

If existing exceptional circumstances can validate an agreement to compromise accrued minimum wages due, the same consideration could validate any agreement to work for less than the minimum in the future, yet no one would suggest that the right to such basic minimum wage can be bargained away, under any circumstances. The waiver agreement is invalid from its inception, regardless of possible bankruptcy, insolvency, disemployment, or total loss prevailing at the time of its execution, cannot vest any rights, and thwarts the congressional policy of uniform application of the Act.

Point 3

The Fort Smith Case Is not in Conflict With Applicable Decisions of This Court

The Circuit Court of Appeals held that the *Fort Smith* case,—*Fort Smith & Western Railroad Co.* v. *Mills*, 253 U. S. 206—is not in point, because the question involved was not whether employees could require their employer to comply with the law, but whether the District Attorney could require the receiver of a railroad company to comply with the law when the receiver and the employees were agreed in wishing to disregard it.

The *Fort Smith* case arose under the provisions of the Adamson Act, approved September 3, 1916, c. 463, 369, Stat. 721 (45 U. S. C. A. 65), and involved an agreement entered into between a railroad carrier and its employees providing for wage payments lower than those prescribed by the statute, which agreement the employees desired to keep, the Court having accepted that the general language of the statute, avowedly enacted in haste to meet an emergency could not be taken to go further than the emergency required or to have been intended to make trouble rather to allay it, further holding that it was not meant to forbid work being done at a lower price than the rates laid down when both parties to the bargain wished to go on as before, and when the circumstances of the road were so exceptional that the lower compensation accepted would not affect the market for labor upon other roads, not at all within the ends that the Adamson Act had in view.

The legislative history of the Adamson Act shows that it was merely an attempt to settle a labor dispute by direct congressional action. At the time the controversy arose, there were two prevailing systems concerning wages of railroad employees: One, an eight-hour day with addi-

tional pay for overtime; and the other, a stated run of 100 miles for every ten hours, with extra pay for any excess. In March 1916, a demand was made on the employers under which eight hours or less was to constitute a day's work for a run of 100 miles or less in all road service, except passenger trains, all miles in excess of 100 to be paid for at the same rate, per mile, with overtime compensation at one and one-half times the pro-rata rates, to be computed on the minute basis. The demand made this standard obligatory on the railroads, *but optional on the employees,* who could retain the then existing system on any particular road, if so desired.

The employers refused this demand and when the dispute failed of adjustment under the provisions of the Newlands Act, approved July 15, 1913, ch 6, Section 1-11, 38 Stat. 103-108, President Wilson called both parties to confer with him, and after arbitration was rejected by the employers he proposed that the principle of the eight-hour day be accepted, while the question of time and one-half for overtime was investigated by a commission to be appointed by him, which suggestion was acceptable to the employees, but the employers would not grant the eight-hour day before an investigation was made.

A Nation-wide strike was abruptly called to begin September 4, but the President secured a promise that the strike would be called off if Congress enacted an eight-hour law in line with his proposal. He then recommended in a Special Message to Congress that the Eight-hour day for train operatives be established by law; that a commission be created to observe the operation of the eight-hour law, and Congress approve an increase in rates by the Interstate Commerce Commission if increased costs under the new law made this necessary. The Adamson Act was enacted embodying these two recommendations, effective

January 1, 1917, under the terms of which, eight hours was to "be deemed a day's work and the measure or standard of a day's work for the purpose of reckoning compensation for services. . . ." A commission of three was ordered appointed by the President to observe the operation and effects of this provision during a period of six to nine months; and pending the report of the commission, and for thirty days thereafter, standard wages for the eight-hour day "shall not be reduced below the present standard day's wage, and for all necessary time in excess of eight hours such employees shall be paid at a rate not less than the pro-rata for such standard eight-hour workday."

The constitutionality of the Adamson Act was assailed but upheld in *Wilson* v. *News*, 243 U. S. 332, as an emergency measure to head off the strike and save the commercial disaster, the property injury and the personal suffering of all, not to say starvation, that threatened throughout the Nation.

The legislative policy of the Fair Labor Standards Act of 1938, as disclosed by its legislative history, and the provisions and the structure of the Act, clearly shows that the *Fort Smith* case is no precedent that can uphold a waiver agreement of the benefits granted thereunder in the public interest.

In adopting this Act, Congress intended to aid the unprotected, unorganized and lowest paid of the nation's working population, those employees who lacked sufficient bargaining power to secure for themselves a minimum subsistence wage, to protect certain groups of the population from substandard wages and excessive hours which endangered the national health and well-being and the free flow of goods in interstate commerce. It is not a temporary measure urgently adopted to meet the consequences of a serious emergency as the Adamson Act, but a fully con-

sidered and amply debated piece of legislation aimed at the elimination of labor conditions detrimental to maintenance of minimum standards of living necessary for health, efficiency and necessary well-being of employees and the eradication of burdens on commerce caused by such substandard conditions.

Starving wages paid employees were caused in great part by financial difficulties of their employers, who as the petitioner in this case, insisted that they could not subsist if forced to pay the minimum wages and overtime compensation required by the Act, thus increasing disemployment with all its evil consequences to the general well-being of their workers and the general public. Congress, before enacting the Act, and establishing its policy, heard their arguments and after weighing those advanced by the supporters of the bill that these starving wages originated labor disputes, unfair methods of competition, and interference with the orderly and fair marketing of goods, made the Declaration of Policy contained in Section 2 of the Act, establishing the motives and purposes of the statute. And if financial inabilities or difficulties of employers originated the starving wages which caused the evils which the Act intends to remedy to secure the maintenance of minimum standards necessary, how can an employer rely now on that same financial inability or difficulty to avoid its obligation to pay in full the minimum wages and overtime compensation earned by his employees after the effective date of the Act, if the declared policy of the Act is that Congress adopted this instrumentality to correct and eliminate the prevailing substandard conditions which burdened and obstructed commerce? The Declaration of Policy contained in the Act, the objectives of this legislation and the methods employed to attain them, may not be set at naught by agreement be-

tween the parties or by acquiescence of employees regardless of exceptional circumstances or not.

The Federal Bankruptcy Act Is Not Involved in This Case

The petitioner advances the theory that the question of the validity of a waiver or settlement agreement of an employee's claim under The Fair Labor Standards Act of 1938, involves the broader question whether such employee can lawfully accept a plan of reorganization or be bound by a reorganization decree, under the Bankruptcy Act; whether employees of an employer that may be adjudicated a bankrupt can make such a settlement; and whether their claim for wages, except those exempted by the Bankruptcy Act, are released by the discharge of the bankrupt.

The waiver agreement, the validity of which is at issue, was a private contract entered into November 4, 1941 (R. 141), between the petitioner and the representatives of some eleven hundred of its employees, and was not executed under or pursuant to any Order, Decree, or other judicial mandate of a Court of Bankruptcy and therefore it is clear that the operation of the Bankruptcy Act or its application, is not involved in this case and is not before this Honorable Court. Furthermore neither the decision of the District Court nor of the Circuit Court of Appeals are based on such Bankruptcy Act.

This Honorable Court is without power to give advisory opinions and will not decide abstract, hypothetical, or contingent questions, or formulate a rule of constitutional law, broader than is required by the precise facts to which it is to be applied, nor decide any constitutional or federal question except with reference to the particular facts before it. *Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450; *Congress of Industrial Organizations* v. *McAdory*, 325 U. S. 472.

The Correction of the Evil Economical Consequences of the Operation of an Act Is Beyond the Province of This Honorable Court.

Petitioner contends that the decision of the Circuit Court of Appeals vitaliy affects the public interest and economic life of Puerto Rico, solely because it may cause the discontinuance of its principal railroad system, and increase disemployment. The Circuit Court of Appeals, answering this same argument rightly held that "whether enforcement of the statutory rights of appellants, respondents before this Court, will benefit or injure them, their employer, or the community is legally immaterial" (R. 173).

It is legally beyond the province of the judiciary to remedy the evil economical consequences of the uniform application of an act in a particular section or territory of the nation, as this will be a clear invasion of the legislative powers of the Congress.

Considerations of public interest or private inconvenience, will not overrule settled principles of law—*Henry* v. *A. B. Dick Co.*, 224 U. S. 1—nor the individual hardship which may result from the application of these principles may induce the Court to place its decision upon considerations which are quite apart from the law. *Shaw* v. *Kellogg*, 170 U. S. 312; *Buchanan* v. *Litchfield*, 102 U. S. 278; *Silliman* v. *United States*, 101 U. S. 465.

Conclusion

The decision of the Circuit Court of Appeals is correct, and the Petition for a Writ of Certiorari should be denied.

L. E. Dubon,
Attorney for the Respondents.